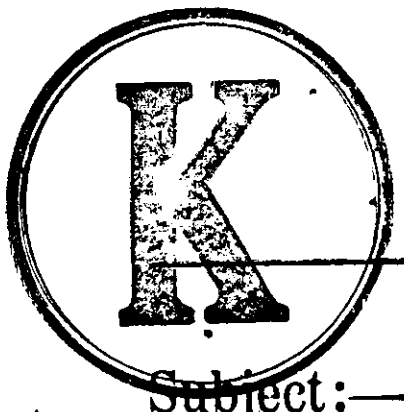
1947.

File No. O. Indus. Dispute .47



Legal DEPARTMENT

A BRANCH

Subject:—

Opinions under the Bombay Industrial Disputes Act, 1938.

1:28

File No. O. Indus. Dispute/47

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C o n t e n t s.

Legal Department File No. 0.1 Indus. Disputes/47.

Cr. No.	Compilation. No.	Subject.	Pages.
		Opinions under the Bombay Industrial Disputes Act, 1938.)	
1.	O. No. 430 14/1/1947.	Sections 43(1), 40-A, 57(2) (ii) whether as regards the demands made by workers of different departments of individual cotton mills for increase in basic wages, a Labour Officer can refuse to hold a meeting under rule under rule 18 of the Bombay Industrial Disputes Rules 1938 on the ground that such demands are sub-judice before the Industrial Court.	1-2.
2.	O. No. 1164 3/2/1947.	Sections 40-A, 62 (1)(ff) whether there is any legal objection to Government referring to the arbitration of the Industrial Court additional demands.	3-4.
3.	O. No. 3572 12/4/1947.	Sections 40, 40-A, 53 (6) whether on a demand which is not included in a notice of strike the latter may be referred to arbitration under s.40-A and whether it is open to a court to hold in case it comes to the conclusion that no dispute existed that an order under section 40-A is without jurisdiction.	5-6.
4.	O. No. 2732 20/3/1947.	Sections 3(20) (iii), 25(3A) and 64 (2) (b) whether the labour officer can convene the meeting of the employees at any place other than the premises of the Bombay Electric Supply and Tramways Company.	7-8.
5.	O. No. 4084 22/4/1947.	Sections 10(1) (c), 11, 15 & 20. The Government of India Act, 1935 section 59(1). The Empire of India Life Assurance Co.'s proposal to challenge the validity of the Adjudication order issued under rule 81A of the Defence of India Rules. Whether all the matters pending adjudication should be referred to a [illegible] tribunal or allowed to take their course, whether rules of procedure for	

Madhav Madhadan.
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5.		tribunals must be brought into force before such a reference is made what will happen to part heard adjudication cases.	9-12.
6.	O. No. 5501 28/5/1947.	Sections 28(1), 29 (1) & (4), 34, 36. whether the conciliator can proceed to hold conciliation proceedings under s. 36.	13-14.
7.	O. No. 6509 24/6/47.	Sections 51, 52 and 62 (1) (ff). Whether a strike would be illegal if it is commenced or continued in cases where an industrial dispute has been referred to the arbitrator under s.49- A.	15-16.
8.	O. No. 6628 26/6/1947	Sections 10(1) 28, 82 whether it is legally feasible to take action under section to and order the management to take back the discharged workers.	17-20.
9.	O. No. 6808 2/7/1947.	Sections 76 and 77. whether it is open to the Textile Labour Association, Ahmedabad to seek for modification of the terms of the Award of the Industrial Court.	21-22.
10.	O. No. 8443 19/8/1947.	Sections 10 (1), 22, 23 and 24 whether it is open to Government to refer any of the matters in dispute for adjudication whether all matters in dispute must be so referred.	23-24.
11.	O. No. 8591 23/8/1947.	Sections 2(5) and 10(1) whether the employees 1) heads of sections or departments, 2) service Technicians, Instructors and Foremen etc. are workmen within the meaning of S.2 (s)	25-28.
12.	O. No. 8731 27/8/1947	Sections 2(s) and 40 whether there exists a trade dispute between the management of the W.I.A. A. and its employees. If so whether any existing legislation Central or Provincial can be made applicable to it.	29-32.

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13.	O. No. 9465. 24/9/1947.	Section 2(c) Interpretation of the term "worker"	33-34.
14.	O. No. 10021 3/9/1947.	Sections 10(c) and 20 (3) whether Government can cancel an adjudication order already issued and make refer additional matters for adjudication at a later stage.	35- 36.
15.	O. No. 2[illegible] 25/9/1947.	Sections 40 A, 50, 52 and 77 whether if in effect substantial injustice has been done to a party by the Industrial Court giving award in pursuance of an a reference under section 40-A, there is any legal means of rectifying such injustice.	37-38.
16.	O. No. 10824. 14/11/1947.	Section 10(1) Dispute between the management and employees of the W.I. A.M.	39-42.
17.	O. No. 11422 20/11/1947.	Whether the demand for share in the "goodwill" of the D.D.C.E. Co. would fall within the meaning of the expression "trade dispute" under the Act.	43-46.
	O. No. 11150 21/11/1947.	Section 42. The Factories Act, 1934, Chapter IV A. Sections 40-B and 60. Reference of a dispute regarding counting of holidays under section 40 B of the Factories Act, 1934 to Industrial Court.	47-49.

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Office of the R.L.A.

Section 43(1) of the Bombay Industrial Disputes Act, 1938 provides for voluntary submission to arbitration while section 40-A relates to compulsory reference to arbitration. Section 40, which bars conciliation proceedings where arbitration is provided, cannot be invoked when there is a compulsory reference to arbitration under section 40-A. Consequently conciliatory proceedings will not, it appears, be barred in cases of of compulsory reference to arbitration under such section 40-A. But such proceedings would be undesirable as they may lead to a conflic of decisions. Consequently either the Act should be suitably amended barring conciliation proceedings or a rule may be made under section 57(2)(ii) empowering the Industrial Court to stay conciliation proceedings when a compulsory reference to arbitration is pending.

Since the conciliation proceedings are provided for by the Act itself and are not barred on a compulsory reference to arbitration under section 40-A it appears such proceedings will not amount to a contempt of court even though the compulsory reference to arbitration is pending.

sd/- D.V. V.

Remembrancer of Legal Affairs.

U. O. to P & S. D. No. 430 dated the 14th January, 1947.

Madhav Raoknder.

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Office of the R.L.A.

A further reference on all points will involve the cancellation of the reference already made by Government by an Order No. 712/46-I, dated 24th December 1946; and such cancellation would be illegal when the Industrial Court is already seized of the matter under section 49A of the Bombay Industrial Disputes Act, 1938 (See section 44). There will, however be no objection to Government referring to the arbitration of the Industrial Court additional demands i.e. demands other than those covered by the reference dated 24th December 1946.

Under clause (ff) of section 62(1) of the Bombay Industrial Disputes Act, 1938 a strike shall be illegal if it is commenced or continued in cases where an industrial dispute has been referred to an arbitration of the Industrial Court under section 49A, before or until the date on which the arbitration proceedings are completed or the date on which the award of the Industrial Court comes into operation whichever is later. The reference made to the Industrial Court on 24th December 1946 is still pending Consequently until those proceedings are completed or the date on which the award of the Industrial Court therein comes into operation, whichever is later, any strike by the employees would be illegal and it is immaterial if the employees have any fresh trade dispute and Government does not refer it to the Industrial Court for arbitration.

sd/- D. V. V.
Remembrancer of Legal Affairs.

C. S. to P and S. D. No. 1164 dated the 3rd February, 47.

Madhav Raoladam.

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Office of the R.L.A.

Section 49-A of the Bombay Industrial Disputes Act, 1938, empowers Government to refer an industrial dispute to the Industrial Court for arbitration. Clause (8) of section 53 provides that it shall be the duty of the Industrial Court to decided industrial disputes referred to it under section 49 or 49A. It is therefore clear that unless there is an industrial dispute there can be no reference to arbitration and consequently if the Industrial Court on enquiry finds that there really existed no industrial disputes between the prties, it could certainly record a finding that ~~there~~ the order of reference made under section 49 A was without jurisdiction.

In his opinion No. 3335, dated 4th May 1946 the R.L.A. opined

" The provisions contained in Chapter VII of the Bombay Industrial Disputes Act, 1938 regarding arbitration are independent of the conciliation proceedings provided for in Chapter VI and the non-obstante clause in section 49-A does not require that the procedure laid down in section 53(3) and Rule 47 should be followed in such proceedings. A notice of change is not therefore a prerequisite to arbitration proceedings under section 49-A and an industrial dispute can be referred to the arbitration of the Industrail Court even though no such notice is given" It is true as observed by D. S., P. and S.D. in his note at p. 13 ante, that the demand made in the notice for an increase in the present rate of wages' would not cover the demand for past wages; but as, stated above no notice of change would be necessary for the purposes of referring an industrial dispute to compulsory arbitration under section 49-A. Consequently the demand for past wages could be referred to arbitration under section 49-A

even though it is not covered by the notice of change, provided Government is satisfied that such demand is a matter of dispute between the parties.

sd/- D.V.V.

Remembrancer of Legal Affairs.

U. R. to P and S.D. No. 3572, dated the 12th April, 1947.

Madhav Raokadam.

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Office of the R.L.A.

It appears that the B.E.S.T. Workers' Union is not yet registered. The Union therefore desires the Labour Officer to convene a meeting of the employees to enable them to elect the "representative of employees" under sub-clause (iii) of clause (29) of section 3 of the Bombay Industrial Disputes Act, 1938. The question raised for the consideration of the Remembrancer of Legal Affairs is whether the Labour Officer can convene the meeting of the employees at any place other than the premises of the Bombay Electric Supply and Tramways [redacted] Company.

Clause (b) of sub-section (2) of section 84 of the Bombay Industrial Disputes Act, 1938 empowers Government to make rules prescribing the manner in which the representatives of employees are to be elected under sub-clause (iii) of clause (29) of section 3. Under rule 18 read with rule 14 of the Bombay Industrial Disputes Rules, 1939 the Labour Officer can hold a meeting of the employees for the purpose at such place and time as he may decide. It is true that section 20(3A) empowers the Labour Officer to convene a meeting of the employees of an employer for any of the purposes of the Act on the premises where the employees are employed for work; but this being merely an enabling provisio cannot exclude the discretion vested in the Labour Officer under rule 18 to call the meeting at any other place. The view taken by P. & S. D. is correct.

sd/- D.V.V.

Remembrancer of Legal Affairs.

M. Ranadive.
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U. O. to P. & S. D. No. 3732, dated the 20th March, 1947.

Office of the R.L.A.

It appears that the Empire of India Life Assurance Co. proposes to challenge the validity of the adjudication order No. 000/40, dated the25th February, 1937 issued under rule 81-A of the Defence of India Rules as continued in force by sec. 3 of the Emergency Provisions(Continuance) Ordinance, 1946 on the ground that the order should have been, in the name of the Governor of Bombay and not "Government of Bombay" as required by section 59(1) of the Government of India Act, 1935. In case the objection is upheld by the High Court, the adjudication reference will be rendered null and void. It is therefore proposed to refer the dispute for adjudication under section 10(1) (c) of the Industrial Disputes Act, 1947 (Act XIV of 1947). The Deputy Secretary, P & S.D. has raised the following points for consideration of the S.L.A.:-

(1) Whether all the matters pending adjudication should referred to a tribunal appointed under the Industrial Disputes Act, 1947 or allowed to take their courses.

(2) Secondly rules of procedure for tribunals appointed under this ~~ex~~ Act have not yet been brought into force that they be brought into force before such a reference is made?

(3) Thirdly, what will happen to the part heard adjudication cases? Is there any objection to the adjudicator not proceeding to hear and dispose of them?

In Misc. Petition No. 102 of 1946 S.A. Dange v. Sir Harshidhai Divatia and others, Bhagwati J. has held that the order of appointment of the Commissioners is bad in so far as it says that such appointment is made by the Government of Bombay and that it contravened the provisions of sec. 59(1) of the Government of India Act, 1935. A similar point was raised by Mr. M. C. Setalvad before the High Court in Emp. v. J. K. Cas Plant ~~Manufacturing Com-~~

Manufacturing Co. and Stone C.J. and ~~Stone~~ Lokur C. J. who constituted the Bench held that the breach of section 40(1), in Sch.IX to the Government of India Act, 1935, a provision similar to section 59(1) of the Government of India Act, 1935, is an irregularity and does not nullify the proceedings; and it is reported that on appeal that decision of the High Court had been upheld by the Federal Court, but it is not known on what grounds the Federal Court has so decided. A copy of the Federal Court judgment has been already called for and after it is received the whole question would be reviewed in consultation with the Advocate General, if necessary. That apart, it appears that Government has no power to withdraw the proceedings from the Tribunal. Consequently it would not be competent for Government to refer matters pending adjudication to a Tribunal under the Industrial Disputes Act, 1947. The pending proceedings will therefore have to be allowed to take their course.

Question No. 2. The second question is whether the rules of procedure for Tribunals appointed under this Act must be brought into force before a reference is made under sec. 10(1) (c) of the Industrial Disputes Act, 1947. Sub-section (1) of sec. 11 provides that the Conciliation Officer, Boards, Courts and Tribunal shall, subject to the provisions of this Act, follow such procedure as may be prescribed. Sub-section (3) provides that the Tribunal shall have the powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit etc. "Prescribed" means prescribed by rules made under this Act (see sec. 2(m Section 15(1) provides that the Tribunal shall hold its proceedings expeditiously and shall assoon as practicable on the conclusion thereof submit its award to the appropriate Government (see definition of " appropriate Government" in section 2(a)) Sub-section (1) of section 38 provides that the appropriate Government may, subject to the conditions of previous publication make rules for the purpose of giving effect to the provisions of that Act. Sub-section (2) (a) of this section provides that in particular and without prejudice to the generality of the foregoing power, such rules may provide for the powers and procedure of Conciliation Officers, Boards, Courts and Tribunals including rules as to the summoning of witnesses etc. It is clear from all these provisions that it is not necessary that Government should first make rules under section 38 before refferrring a dispute to a Tribunal for adjudication under section 10(1) (c) of the Act.

Question 3. The third question is that will happen to the part heard adjudication cases and whether there is any objection to the Adjudicator proceeding to hear and dispose of them. If it is considered that the order of reference is ultra/vires the Adjudicator will have to dismiss the reference, even if it be part heard. Consequently it would be for the Adjudicator to decide this question.

sd/- P.N.I.
2/4
Remembrancer of Legal Affairs.

U. R. to F & S.D. No. 4054 dated the 22nd April & 1947.

Madhav Raokelkar.

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Office of the R.L.A.

In February 1947 four member Mills of the Ahmedabad Millowners' Association served individual notices of change under section 28(1) of the Bombay Industrial Disputes Act, 1938 on the Textile Labour Association, Ahmedabad as the representative of their respective employees, desiring ~~them~~ introduction of 4 looms per weaver and 4 sides per spinner The Textile Labour Association thereupon under section 29(1) gave intimation of notice of change to the other employers thereby under sub-section(4) the other employees (~~workmen~~,i.e. employees in other Mills) were deemed to be affected by such change. No agreement was reached and the four Mills still desiring that the change should be effected have forwarded the statements (individually) to the ~~Conciliator~~ Conciliator under section 34. The question for the consideration of the Remembrancer of Legal Affairs is whether the Conciliator can proceed to hold conciliation proceedings under section 35 of the Act.

Section 34 of the Bombay Industrial Disputes Act, ~~1938~~ provides that if any change in respect of which notice is given under section 29 or an intimation is given under section 29 is objected to by the employer or the employee as the case may be the party who sent such notice or intimation shall, if he still desires that the change should be effected, forward to the Registrar etc a full statement of the case, In the present case there was no agreement. Consequently the four Mills that gave notice of change having still desired that the change should be effected, were competent to forward their statements under section 34. On receipt of such statement the Conciliator is bound to proceed under section 35.

The first interpretation tried to be put upon sections 28 29 and 34 by the ~~Commissioner~~ Directorate of Labour Administration is hardly warranted. After an intimation is given under sec.29, it does not mean that the original notice is merged in the general notice and the original party who gave notice is

disabled from proceeding with the matter. Any such interpretation would be contrary to the clear and unambiguous wording of section 34 (1). The second interpretation being in consonance with the provisions of the Act is correct.

sd/- P.M.L.
27/5
Remembrancer of Legal Affairs.

U. R. to P. & S. D. No. 5501 dated the 28th May 1947.

Madhav Raokadam.
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Office of the R.L.A.

Under clause (ff) of sub-section (1) of section 62 of the Bombay Industrial Disputes Act, 1938 a strike shall be illegal if it is commenced or continued in cases where an industrial dispute has been referred to the arbitrator of the Industrial Court under section 49A, 49B (1) before or until the date on which the arbitration proceedings are completed or (ii) before or until the date on which the award of the Industrial Court comes into operation,

whichever is later.

Under section 51 the award shall come into operation on the date stated in the award or where no such date is stated therein, on the date on which it is registered; and under section 52 the arbitration proceedings shall be deemed to have been completed when the award is published under section 59. Whether the date on which the arbitration proceedings are completed or the date on which the award of the Industrial Court comes into operation is later within the meaning of clause (ff) of sub-section (1) of section 62 will have to be determined with reference to the provisions of section 51 and 52.

sd/- D. V. V.

Personal Assistant of Legal Affairs.

U. R. to P. & S. D. No. 6509 dated the 24th June & 1947.

Madhav Bholadar.

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Office of the B.L.A.

It appears that the Khandesh Spinning and Weaving Co. wanted to retrench a few workers and for that purpose gave notice of change under section 28 of the Bombay ~~Recognised~~ Industrial Disputes Act, 1938. The conciliation proceedings having failed the management proceeded to discharge the workers whereupon the workers including those discharged resorted to a stay-in strike as a result of which the management had to close down the mills. The questions raised for the consideration of the B.L.A. are:-

(1) Whether it is legally feasible to take action under section 10 of the Industrial Disputes Act, 1947 to refer the dispute to a tribunal and order the management to take back the ten discharged workers.

(2) Whether it would be objectionable to resort to the Industrial Disputes Act, 1947 even though the facts in the present case do not constitute a lock-out as defined in the Bombay Industrial Disputes Act, 1938.

(3) Whether it is open to take action under the Industrial Dispute Act, 1947 irrespective of the provisions of the Bombay Industrial Disputes Act.

Section 82 of the Bombay Industrial Disputes Act, 1938 provides that nothing in this Act shall affect any of the provisions of the Trade Disputes Act, 1929. The Industrial Disputes, Act, 1947 repeals the Trade Disputes Act and re-enacts (see section 40). Consequently by virtue of section 8(1) of the General Clauses Act, 1897 reference to the Trade Dispute Act, 1929 in section 82 of the Bombay Industrial Disputes Act, 1938 will have to be read as reference to the Industrial Disputes Act, 1947 with the result that the provisions of that Act would in no way be affected by the Bombay Industrial Disputes Act. The Bombay

Madhav Nachandani.

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Industrial Disputes Act would therefore be no bar to taking action under the Industrial Disputes Act. The reply to the ~~said~~ third question would be in the affirmative.

It is immaterial whether the facts in the present case constitute a lock-out as defined in the Bombay ~~Industrial~~ Industrial Disputes Act, 1938 so long as they so do under the Industrial Dispute Act, 1947. Consequently there appears no legal objection to resorting to the provisions of the Industrial Disputes Act even though the facts do not constitute a lock-out under the Bombay Industrial Disputes Act. The reply to the second question would therefore be in the negative.

Sub-section (1) of section 10 of the Industrial Disputes Act, 1947, provides :-

" If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing:-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or

(c) refer the dispute to a Tribunal for adjudication."

Sub-section (3) provides .

" Where where an industrial dispute has been referred to Board or Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of reference."

The discharge of ten workers in the present case by the management is an industrial dispute within the meaning of clause (k) of section 2 and the closing of the mills on

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the refusal to employ the ten discharged workmen amounts to a lock/out within the meaning of clause (l) of section 2. Consequently it would be legally possible for Government to refer the dispute in the present case to a tribunal under clause (c) of sub-section (l) and to order the management to take back the ten discharged workmen under sub-section (3) of section 10 of the Industrial Disputes Act. The reply to the first question would therefore be in the affirmative.

sd/- D.V.V.

Secretary of Legal Affairs.

U. R. to P. and S.D. No. 6626, dated the 26th June 1947.

Madhav Mahadan.
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The question for R.I.A.'s consideration is whether in view of the provisions of sections 76 and 77 of the Bom. ~~Industrial~~ Industrial Disputes Act, 1938, it is open to the Textile Labour Association, Ahmedabad, to seek for ~~modification~~ modification of the terms of the Award of the Industrial Court till 15/2/1948.

With reference to the notice of change dt.24-1-1945 given by the Textile Labour Association, Ahmedabad under sub-rule (2) of rule 47 of the Bom. Industrial Rule, 1939, an agreement was reached between the Ahmedabad Mill owners' Association and the Textile Labour Association Ahmedabad, to the effect that the question of change over of the workers of all the shifts in the local member mills be submitted for arbitration of the Industrial Court, Bombay, under section 43 of the Bom Industrial Disputes Act, 1938. After having heard the parties concerned, the Arbitrator made an Award, and as required by sub-section (1) of section 50 of the Bom. Industrial Disputes Act, 1938, the Industrial Court gave notice of the Award to the parties concerned and forwarded a copy of the same to the Registrar and the Labour Officer. As required by section 50 (2), the Registrar entered in the register kept for the purpose the said Award on 11/2/1947.

Under section 51, the Award shall come into operation on the date stated in the Award or where no such date is stated therein on the date on which it was registered under section 50. Para 12 of the Award provides that it shall remain in force for one year from the 15th of February 1947, and the matter will be placed before the Court at the end of that period for reconsideration. As the Award was made on the submission made to the Industrial Court under section 43 it will be binding on both the parties (see sections 50 and 76(1)) and under section 77 (1) read with para 12 of the Award, the Award will cease to have effect from 14-2-1948. As the said Award is binding on the Textile Labour Association, Ahmedabad and the Ahmedabad and the Ahmedabad Millowners' Association for a period of one year upto 14-2-1948, during the period that the Award is operative it

it will not be legally competent to the Textile Labour Association, Ahmedabad, to give notice of change in respect of the industrial matter which is already covered by the Award. The view expressed in the P, & S.D. Note is correct. The papers may be "seen and returned."

Sd/- E.T.S
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A L R. I agree. Reply may be as at A.

Sd/- R.T.K.
30/6

R. L. A. The correctness of the view is perfectly obvisous. I do not see how there could be any doubt about it. Reply as at A.

sd/- D.V.V.
1/7.

U. O. R. to P & S. D. No. 6808 dated 2/7/1947.

Madhav Raokadam.
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Office of the R.L.A.

The questions raised for the consideration of the R.L.A. are :-

(1) Whether under section 10(1) of the Industrial Disputes Act, 1947 (XIV of 1947), it is open to Government to refer any of the matters in dispute for adjudication or whether all matters in dispute must be so referred, and
(2) Where only some of the matters in dispute are referred for adjudication under section 10(1) a strike by the employees on any matters not included in the adjudication reference during the pendency of adjudication proceedings will be legal under section 23.

Under clause (c) of section 10(1) of the Industrial Disputes Act, 1947 if any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing, refer the dispute to a Tribunal for adjudication. "Industrial dispute" as defined in clause (k) of section 2 means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or nonemployment or the terms of employment or with the conditions of labour, of any person. Dispute or difference may relate to one or more than one matter and in the latter case all such matters constitute the dispute or difference. Consequently Government will have to refer for adjudication under clause (c) of section 10(1) all matters in dispute and not any of them.

Under section (24) a strike or a lock out shall be illegal if-

(a) it is commenced or declared in contravention of section 22 or section 23; or

(b) it is continued in contravention of an order made under sub-section (3) of section 10.

Under section 23(b) a strike or a lock-out is prohibited during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings. Section 10(3) provides

that where an industrial dispute has been referred to a Board or Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference. It is apparent from these provisions that in cases where Government refers some of the matters in dispute for adjudication under section 10(1), even if an order is passed under section 10(3), such order would be in connection ~~not~~ with those matters and a strike or a lock-out in respect of other matters would not be illegal. But under section 23 such strike would be illegal during the pendency of proceedings before the Tribunal and two months after the conclusion of such proceedings only if it be in breach of contract.

sd/- D.V.V.

Remembrancer of Legal Affairs.

U. R. to P. & S.D. No. 8443, dated the 19th August 1947.

Madhav Raokadam.
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Office of the R.L.A.

It is proposed to refer for adjudication under section 10(1) of the Industrial Disputes Act, 1947, the dispute between the Ford Motor Company of ~~Bata~~ India Ltd., Bombay and its workmen. The question raised for the consideration of the R.L.A. is whether the employees i.e. (a) heads of sections and/or departments (1B(d) at p.20 ante), (b) Service Technicians ~~Instructors~~ Instructors and Foremen, (1B(c) (ii) at p.20 ante), (c) Heads of Technical Depts. Garage foremen, (1B (c) (iii) at p. 20 ante), and (d) Filed Mechanics and First Aiders (1B (c) (i) at p. 20 ante) are workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947.

"Workman" as defined in clause (s) of section 2 of the Industrial Disputes Act, 1947, means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work. "Clerical service" means strictly a service that involves writing (see Byrne's Law Lexicon p. 216) and manual signifies what is employed or used by hand (Ibid p. 784) Manual labour is labour performed by hand(1884, 13 Q.B.D. D.832). In order to determine whether a person is engaged in "manual labour" it is necessary to look at such person's real and substantial employment, not what he may be called upon to do incidentally in the course of his employment (Wood v. Lawrence, 1891,61 L.J.M. C. 21). The expression "manual work" is of wider signification than the expression "manual labour", for many many occupations involve the former but not the latter, such as telegraph clerks and all persons engaged in writing (per Smith J. Cook v. Metrop Tramways Co. 18 Q.B.D.684). It was held in that case that the ~~tram~~ driver of a tramcar though engaged in manual work is not

engaged in manual labour." Probably the true meaning of "labour" is this, 'Real labour' is that which tests a man's muscles and sinews (per Esher M.R. Yarmonth v. France, 19 Q.B. D. 651). The expression used in used in the definition of "workman" in clause(s) of section 2 is manual work, and not manual labour. Consequently applying the aforesaid test, it appears, the employees under all the four categories (a) to (d) appear to come within the definition 'workman' under clause (s) of section 2. The Director of Labour Administration

Madhav Raokadam.
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appears to consider that First Aiders only in class (d) are not workmen. He has not given reasons for his view, nor is there anything on record to show that their duties do not involve any manual work. The Director of Labour Administration may in the light of the aforesaid legal position determine whether or not "First Aiders" can be called workmen.

sd/- P.N.L. 22/8
Remembrancer of Legal Affairs.

U.O. to P. & S.D. No. 8501 dated the 23rd August 1947.

Mr Madhav Baokdam.

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Office of the R.[illegible] L.A.

The questions referred for opinion to the R.L.A. are:-

(1) Whether there exists a trade dispute between the management of the W.I.A.A. and its employees;

and

(2) If it is held that there is a trade dispute whether any existing legislation Central or Provincial can be made applicable to it.

2. At the outset it must be pointed out that the expression "trade dispute" no longer occurs in any of the statutes now current and applicable to the subject. That word occurred in the Trade Disputes Act, 1929, hich has now been repealed under section 40 of the Industrial Disputes Act, 1947, and is, therefore nolonger in force. The appropriate expression is "industrial dispute" which occurs both in the Industrial Disputes Act, 1947, and the Bombay Industrial Disputes Act, 1938, which are at present the only two statutes applicable to the subject until the Bombay Industiral Relations Act, 1946, is brought into force.

3. "Industrial dispute" has been defined in the Industrial Disputes Act, 1947, to mean any dispute or difference between employers and employers, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. The dispute between the W.I.A.A. and their employees fulfils all the requirements of the latter part of the definition and the only question to be considered is whether it is a dispute between employers and workmen. "Workmen" is defined in section 2(s) to mean any person employed in any industry to do

to do any skilled or unskilled manual or clerical work for hire or reward." "Industry" is defined in section 2 (j) to mean any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. The definition of "industry" has been almost bodily taken from the Commonwealth Conciliation and Arbitration Act of Australia, and, therefore, the cases decided under that statute would be of some help. In the case of the Federal Municipal and Shire Council Employers' Union v. City of Melbourne (1919, 26 Commonwealth Law Reports p. 508), it was held by the majority of the Court that in order to constitute an industrial dispute it was not necessary that the undertaking in which the parties to the dispute are engaged should be an industry, a trade or a business carried on for profit. As a rule the word "business" has no technical meaning but is to be read with reference to the object and intent of the Act in which it occurs. Ex parte Breull 1881, 16 Chancery Division 484 (per Lord Justice James). The word is of large signification and in its broadest sense includes nearly all the affairs in which either an individual or a corporation can be actors. It implies something which busies or occupies time, attention and labour in a consistent course of conduct as distinguished from sporadic work. There is no reason why the word "business" used in the definition of "industry" quoted above should be given a restrictive meaning and should be confined to a business carried on for trade or profit. In the case of the Federated State School Teachers' Association of Australia v. Victoria (1929, 41 commonwealth Law Reports p. 569 at pp. 576-578) this is what Isaacs J. said in a dissenting judgment:

> " Consequently say the employers, education not being wealth in that sense there never can be an industrial dispute between employers and employees engaged in the avocation of

education, regardless of the wealth derived by the employers from the joint co-operation..... The contention is radically unsound. ..... It neglects the fundamental

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character of industrial dispute as a distinct and insistent phenomenon of modern society. Such disputes are not simply a claim to share the material wealth jointly produced and capable of registration in statistics. At heart they are a struggle, constantly becoming more intense on the part of the employed group engaged ~~in~~ in co-operation with the employing group in rendering services to the community essential for a higher general human welfare to share in that welfare in a greater degree."

It appears ~~from~~ from the letter of the President of the Association at p. 53 of the file that the object of the Association is to give service to its members in return for subscription paid by them. It is not known whether the Articles of Association of the U.I.A.A. make the position still further clear. But even upon the information now available it would be quite safe to hold that for purposes of the Industrial Disputes Act, this would be a business and, therefore, an industry. In that view the dispute between the U.I.A.A. and their employees would be an industrial dispute. Consequently the Government have the power by order in writing to refer the dispute to a Tribunal for adjudication as constituted under the Act (section 10).

4.) The definition of "industry" given in the Bombay Industrial Disputes Act, 1938, is practically identical with the definition discussed above, and the definition discussed above, and the difinition of "industrial dispute" involves the same consideration though the word used there is "employees" and not "workmen". The above remarks are, therefore, equally applicable under the Bombay Industrial Disputes Act, 1938. It must, however, be pointed out that sub-section (3) of section 2 of that Act requires that the Provincial Government may by notification in the Official Gazette direct that all or any of the provisions of this Act shall apply to

such industry as may be specified in the notification.

It follows, therefore, that unless by noficiation the proyisions of the Act are applied to the W.I. A.A. no arbitration under that Act would be legally feasible.

sd/- P.M.L. 27/8

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U. O. to P. & S. D. No. 8731, dated the 27th August 1947.

Madhav Reokadam.
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Office of the R.L.A.

Interpretation of the term "workman" Industrial Disputes Act, 1947.

The distinction made by Sir Harshidbhai V. Divetia between mere clerks and higher officers may not hold good in the case of manual workers and their supervisory staff, heads of technical departments etc. According to the definition of "workman" in section 2(s) of the Industrial Disputes Act, 1947, any person employed to do and skilled or unskilled manual work (and not manual labour) is a workman. As observed by the R.L.A. in his last opinion the expression "manual work" is of a wider signification than the expression "manual labour" for many occupations involve the former but not the latter. Consequently, persons employed to do skilled or unskilled manual work may include supervisory staff and heads of technical Department, provided they are required to mix work with their hands with or without skill in the discharge of their duties. The question whether supervisory staff and heads of technical department can be brough within the scope of the definition of "workman" in section 2(s) will have to be decided with reference to the nature of work done by this staff.

sd/- P.L.L.
22/9/47.
Remembrancer of Legal Affairs.

U. R. to P. & S. D. No. 9465 dated the 24th September 1947.

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Office of the P.L.A.

By P. & S.D. Notification No. 1632/46 dated 9.8.47 the dispute between the Sholapur Motor Transport Co. Ltd. and the workmen employed by it was referred to a Tribunal for adjudication under section 10(c) of the Industrial Disputes Act, 1947, and by virtue of section 20(3) the proceedings before the Tribunal are deemed to have commenced on the date of reference, i.e. on 9.8.1947. The dismissal or discharge of eleven drivers by the Management after the strike notice is matter which could have been included in the dispute referred to the Tribunal for adjudication on, 9.8.47. It cannot now be included in that dispute by amending the order dated 9.8.47, as the Tribunal is already seized of the matter alone which is covered by the order and proceedings of the Tribunal cannot be interfered with.

Government may, however, refer the dispute in respect of the discharge or dismissed drivers to the Tribunal for adjudication by a fresh order under section 10(c) and request the Tribunal to hear it along with the reference dated 9.8.1947.

sd/- P.H.L.
3.9.1947.
Remembrancer of Legal Affairs.

U. R. to P. & S. D. No. 8091, dated the 3rd September, 47.

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In this case the reference was made to the Industrial Court under section 49A of the Bombay Industrial Disputes Act, 1938, and the award was made on the 31st of May, 1947. Under section 52 of the Act the arbitration proceedings shall be deemed to have been completed when the award is published under section 50, and under section 77 a registered award shall cease to have effect on the dates specified therein or if no such date is specified therein, on the expiry of the period of six months from the date on which notice in writing to terminate such award is given by any of the parties thereto to the other party. As no date was specified in the award it is apparent that until the expiry of the period of six months from the date of notice, which presumably has not yet been given, the registed award would be binding between the parties and it would not be legally feasible to terminate it before the expiry of that six months. No question of reopening the arbitration proceedings arises since they have already been completed under section 52. If it was felt that substantial ~~x~~ injustice was done to the workers, the proper course would have been to give notice as provided by section 77 immediately after the award was registered. At this stage no legal means under the Bombay Industiral Disputes Act, 1938, seems ~~xxxx~~ available for terminating or reopening the award.

2. It would not also seem feasible to interfere with the award by referring the dispute under

the Industrial Disputes Act, 1947, inasmuch as in the first place it would be difficult to maintain that there is a fresh dispute and in the second place there is no repugnancy in the matter of references, and awards between the provisions of the Bombay Industrial Disputes Act, 1938, and the Central Industrial Disputes Act, 1947.

3. In the absence of any allegations which supply recognized grounds for upsetting awards such as misconduct or improper procurement of the award, it would not also seem feasible to get the award set aside on general principles applicable to arbitrations and merely on the ground that the award is deemed unjust by one party to the reference.

4. The R.L.A. would suggest that as this is a question of pressing imprtance, if necessary, the P.& S.D. may directly obtain the advice of the Advocate General in Bombay. If it is decided to obtain his advice, this opinion may be forwarded to him together with the reference made by the P. & S. D. as the case stated for his opinion.

sd/- P.M.L.25/9
Remembrancer of Legal Affairs.

U. R. to P. & S. D. No. 26-p, dated the 25th September, 1947.

Madhav Raokadam.
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Please see R.L.A.'s opinion at pp. 103-106 ante. After that opinion was given, the Political & Services Department has issued a notification No.1035-46 dated 17th September 1947 referring the trade dispute to the Industrial Tribunal under section 10(1) of the Industrial Disputes Act, 1947. Messrs. Kanga & Co., Solicitors, for the Western India Automobile Association have given a notice to Government threatening to move the Bombay High Court unless the aforesaid notification is withdrawn by Government. They want a reply from Government by 5 p.m. on Friday the 14th inst. P. & S. D. has sent the papers to the R.L.A. to see urgently and advise what kind of reply should be given to Messrs. Kanga & Co.

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Seen and returned.

All that the Government can do at this stage is to reply to Messrs. Kandar & Co., Solicitors, that Government sees no reason to withdraw the notification issued under section 10(1) of the Industrial Disputes Act, 1947, and leave it to Messrs. Kandar & Co. to move the High Court if they so desire.

sd/- P.U.L.
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Remembrancer of Legal Affairs.

U. R. to P. & S. D., No. 10824, dated the 14th November, 1947.

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The question for R.L.A.'s consideration is whether the above demand for share in the 'goodwill' of the B.B.S.T. Company, referred to in the P.A S. D. Notifn. Nos. 5907/34-I, and 590/34-II, dated the 20/3/47, would fall within the meaning of the expression "trade dispute" under the Trade Disputes Act, 1929.

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Reply may be:-

Since the Industrial Court has now decided that the employees of the B.B.&C.I. Company are not entitled to a share in the good-will of the Company, the question raised in this case does not survive.

Demand for a share in good-will amount whether an industrial dispute?

Trade Dispute Act, 1929, sec. 2(18)

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29/11

U. O. R. to P. & S. D. No. 11422 dated 29/11/1947.

Madhav Bhokadea.
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Office of the R.L.C.

Reference of a dispute regarding counting of holidays under section 40B of the Factories Act, 1934, to Industrial Court.

Bombay Industrial Relations Act, 1946, Sections 42(2), 60(g).

The main question for consideration is whether the dispute as to whether service preceding the date of the commencement of Chapter 4A of the Factories Act, 1934, should be counted for holidays under section 40B, sub-section (1), and if so, whether, in the event of the employers disputing it, provisions of the Bombay Industrial Relations Act, 1946, can be resorted to for settling the dispute.

In their letter, dated the 4th June 1946, the Government of India have already held that the continuous service of a worker preceding the date of commencement of Chapter 4 A of the Factories Act, 1934, i.e. 1st January 1946, should be included in the computation of the period of 12 months continuous service referred to in sub-section (1) of section 40B of the Act. If the employers refuse to so include the continoun service of the worker preceding 1st January 1946, they would be deemed to have contravened section 40B of the Factories Act and would be liable to punishment under clause(g), section 60, provided the interpretation put on section 40B by the Government of India is correct. Section 42, sub-section (2) of the Bombay Industrial Relations Act, 1946, entitles an employee to give a notice of change in respect of any industrial matter not specified in Schedule I or Schedule II.

Item 7 in Schedule I relates to holidays. Consequently, the question whether the employees are entitled to include their service prior to 1st January 1946 for the purpose of computation of holidays, would not be a matter in respect of which a notice of change can be given under section 42, sub-section(2). The proper course to follow would be to proceed under clause (g) of section 60 of the Factories Act in the event of the employers refusing to count the previous service of the employees for the purpose of computing holidays.

sd/- P.M.L.

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Remembrancer of Legal Affairs.

U.R. to P.& S. D. No.11159, dated the 21st November, 1947.

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